

**BEFORE THE LAND USE HEARING EXAMINER
OF CLARK COUNTY, WASHINGTON**

Regarding an application by Primelan Properties)	<u>FINAL ORDER</u>
for approval of a preliminary plat to divide 2.48)	
acres into 30 lots in the R-22 zone at 7416 NE 58 th)	PLD 2004-00056¹
Street in unincorporated Clark County, Washington)	(Walnut Grove)

A. SUMMARY

1. The applicant requests approval to divide the 2.48-acre site into 30 lots. A new single-family detached dwelling will be built on each of the proposed lots. The applicant will remove the existing home and outbuildings on the site. All proposed lots will comply with the minimum dimensional standards for the R-22 zone. The City of Vancouver will provide domestic water and sanitary sewer service to the site. The applicant will dedicate right of way for and will improve the site's NE 56th and 58th Street frontages to County road standards. The applicant also proposes to construct off-site sidewalks and road improvements between the east boundary of the site and the abutting Robins Glenn subdivision. The applicant will extend a new street, proposed NE 75th Avenue through the site between NE 56th and 58th Streets. All of the proposed lots will have direct driveway access to NE 75th Avenue. The applicant proposes to collect storm water from impervious areas and to convey it to a storm water facility in the southeast corner of the site for treatment, detention and discharge to the existing storm sewer system at less than predevelopment rates.

2. The County issued a Determination of Nonsignificance ("DNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. County staff initially recommended that the examiner deny the application, because the proposed development does not make adequate provisions for students walking to school. See the Development & Environmental Review Staff Report & Recommendation to the Hearing Examiner dated September 8, 2004 (the "Staff Report") as amended by the Memorandum to the Hearing Examiner dated September 23, 2004 (the "Memorandum"). However, after the applicant agreed to provide a walkway between the site and existing sidewalks to the east, County staff recommended that the examiner approve the application, subject to the conditions in the Staff Report. The applicant accepted those findings and conditions, as amended, without objections or corrections. Seven persons testified at the hearing with objections and questions. Other persons testified in writing. Disputed issues or concerns in the case include the following:

a. Whether the proposed street connection will attract excessive cut-through traffic and create a hazard for area residents;

¹ This decision also addresses SEP2004-00093, EVR2004-00047, ARC2004-00021, MZR2004-00124 and the related road modification.

- b. Whether and to what extent the applicant is required to construct off-site sidewalks and road improvements;
- c. Whether the proposed development makes adequate provisions for vehicular parking;
- d. Whether the proposed development makes adequate provisions for children who walk to school, RCW 58.17.110;
- e. Whether the proposed development will increase flooding and drainage problems in the area;
- f. Whether the proposed development will impact water quality in the area;
- g. Whether the applicant will construct retaining walls on the site;
- h. Whether and to what extent the applicant is required to provide landscaping and fencing around the perimeter of the site; and
- i. Whether the proposed development on the site will be compatible with existing development on abutting properties, CCC 40.520.020.C (3).

3. Based on the findings provided or incorporated herein, the examiner approves the subdivision subject to the conditions at the conclusion of this final order.

B. HEARING AND RECORD

1. The examiner received testimony at a public hearing about this application on September 23, 2004. That testimony and evidence, including a videotape of the public hearing and the case file maintained by the Department of Community Development (“DCD”), are included herein as exhibits. A list of the exhibits is attached to and incorporated into this final order. The exhibits are filed at DCD. The following is a summary by the examiner of selected testimony and evidence offered at the hearing.

2. County planner Michael Uduk summarized the Staff Report and the Memorandum and showed photographs of the site.

a. He noted that the site could be developed with apartments at a density of 22 units per acre under the current R-22 zoning. However the applicant proposed to develop the site with 30 single family detached homes on individual lots. The proposed home sizes, setbacks and height are consistent with the Code. The Code does not regulate housing design. The applicant is required to provide an L-3 buffer consisting of a 6-foot fence or hedge and trees on the east boundary of the site, abutting property zoned R1-6.

b. He noted that neighboring residents expressed concern with increased stormwater runoff generated by the proposed development. The applicant is not required to remedy existing drainage problems in the area. However the applicant is prohibited from increasing or concentrating stormwater runoff onto adjacent properties. The applicant proposed to collect stormwater runoff from impervious areas on the site and direct it to the stormwater facility for treatment, detention and discharge to the existing storm sewer system.

c. He opined that the development as originally proposed does not make adequate provision for children walking to school from the site as required by RCW 58.17.110. Students residing on this site will walk to Walnut Grove Elementary School north of the site. The applicant will construct sidewalks within the site and along the site's frontage. However there is a roughly 18-foot wide parcel of land between the site and the abutting Robins Glen subdivision to the east that is not developed with sidewalks or other frontage improvements. Children living on the site would be required to walk in the street in order to access the existing sidewalks east of the site that provide access to the school. However the applicant proposed to provide an asphalt walkway on 56th and 58th Streets between the site and the abutting Robins Glen subdivision. The proposed walkway will provide a safe path for students consistent with RCW 58.17.110. Therefore he recommended approval of the application subject to the conditions in the Staff Report, as modified by Exhibit 24. He requested the examiner add a condition of approval requiring that the applicant install an asphalt walkway on 56th and 58th Streets as proposed. Any modification of the condition should require a Type III review.

d. He noted that the proposed development will pay traffic, school and park impact fees to mitigate the impact of the development on those facilities.

3. Planner Mathew Newman, traffic engineer Howard Stein, civil engineer Bob Carpenter and professional surveyor Steven Flowers testified for the applicant.

a. Mr. Newman summarized the proposed development and the proposed road modifications. He accepted the findings and conditions in the Staff Report with one exception addressed by Mr. Carpenter. He testified that the applicant is willing to provide an asphalt pedestrian path within the existing right of way east of the site to provide a safe walking route between the site and the existing sidewalks to the east.

i. He testified that the applicant will construct paired driveways on the proposed lots in order to maintain opportunities for on-street parking. The proposed development will provide opportunities for roughly 15 on-street parking spaces on proposed 75th Avenue.

b. Mr. Stein testified that it is not feasible to provide access to the site from 58th Street in compliance with the County intersection spacing standards even if the applicant shifted the intersection to the west boundary of the site. The applicant proposed to construct NE 75th Avenue in the center of the site in order to facilitate development on the site. The proposed intersection spacing will not create a hazard.

i. He noted that the extension of 75th Avenue is consistent with the County's policy of creating a grid street system that allows traffic to disperse onto multiple roadways. He opined that the extension of 75th Avenue through the site will not encourage excessive cut-through traffic. Existing NE 76th Avenue east of the site provides a similar opportunity for cut-through traffic. However 76th Avenue does not carry a significant volume of traffic in excess of the traffic generated by the homes on the street, based on the traffic counts in the traffic study.

ii. He testified that on-street parking acts as an effective traffic calming device, because vehicles parked on the street reduces the width of the road and force drivers to slow down in order to pass opposing traffic.

iii. He opined that the lack of road improvements along the 18-foot parcel between the site and the Robins Glen subdivision will not create a hazard. The applicant can design the roadway to clearly delineate the gap, installing striping, pavement buttons or similar devices to clearly identify the travel lane.

iv. He testified that there is some confusion regarding the ownership of the 18-foot strip between the site and the Robins Glen subdivision. The applicant is concerned that a condition of approval requiring construction of a sidewalk across this strip could delay final approval until the ownership issues are resolved. Therefore he requested the examiner require that the applicant only make a diligent, good faith effort to construct sidewalks along the gap.

c. Mr. Carpenter summarized the design of the proposed stormwater facilities. The stormwater facilities are designed to accommodate runoff from this site and from the proposed Walnut Village subdivision north of the site, across 58th Street. The applicant will collect stormwater from all impervious areas within these developments and direct it to a facility in the southeast corner of the site for treatment and detention. The applicant will release treated stormwater into the existing storm sewer system east of the site. The applicant may use either above or below ground detention, or a combination of the two.

i. He requested the examiner modify condition A.12 of the engineering report, Exhibit 24, to allow the applicant the option of placing an underground detention facility within the street right of way.

ii. He opined that the proposed development will reduce the volume of stormwater flowing onto adjacent properties. The applicant will grade the site so the majority of the lot area will drain toward the street. Portions of the rear yards may continue to drain onto adjacent properties as the site does now, but substantially less than occurs now. Roof drains from homes on the proposed lots will discharge directly to the on-site storm sewer system.

iii. He argued that stormwater is unlikely to infiltrate through the bottom of the detention pond and exacerbate flooding problems on adjacent properties. The soils on the site are highly impervious. Stormwater infiltrates into the ground at less than 1-inch per hour, based on the on-site infiltration testing.

d. Mr. Flowers testified that a survey error in the Robins Glen subdivision plat created an 18-foot strip of land between the site and the Robins Glen subdivision. The applicant is negotiating with the developer of the Robins Glen subdivision to dedicate right of way for road improvements abutting the “gap”. The applicant will construct frontage improvements along the gap if adequate right of way is available.

4. John Sickonic expressed concern with increased traffic in the area. Streets in the area carry a significant amount of cut-through traffic. Drivers cut through neighborhoods in the area in order to access the Vancouver Mall. The proposed 75th Avenue connection will exacerbate the problem, because it will provide the first opportunity for drivers eastbound on 58th Street to turn south. He noted that there are no safe pedestrian connections between this area and Vancouver Mall. He argued that the proposed lots are too small to provide usable outdoor play areas. Children will be forced to play in the streets, creating a hazard. Driveways serving the proposed lots will eliminate opportunities for on-street parking on 75th Avenue, forcing residents and their guests to park in the surrounding neighborhoods. He testified that the water table in the area is very high in winter and the ground becomes very saturated.

5. John Peterson expressed concern with the compatibility of the proposed development with existing homes to the east, due to the smaller lots and greater density. The proposed two-story homes will look down into adjacent residences. The higher elevation of the site will increase the problem.

a. He expressed concern that the proposed development will aggravate existing runoff and flooding problems on adjacent properties. Many existing residents installed private stormwater facilities in order to drain their lots and direct stormwater away from their homes. Grading and construction on the site could direct additional runoff onto adjacent properties, causing additional flooding.

b. He testified that residents of the Robins Glen subdivision expect to obtain ownership of the 18-foot strip of land between their homes and the site. They intend to grade and landscape the area to provide a buffer between the site and their homes. They requested the applicant work with them so they can coordinate their grading and landscaping with development on the site maximize the buffer and screening effect of the landscaping.

c. He argued that the applicant should be required to construct frontage improvements on 56th and 58th Streets between the site and the Robins Glen subdivision. Without additional improvements the pavement width on these streets will vary from a full-width to half-width to full width within a short distance, creating a hazard for

opposing traffic. He argued that the proposed development is creating the problem and therefore should be required to remedy it.

6. Hayward Toler questioned whether the applicant will provide a buffer between the site and his home to the west.

7. Rodger Butir testified that he experiences significant drainage and runoff problems on his property south of the site under existing conditions. Development on the site will exacerbate the problem. He expressed concern that the stormwater will infiltrate into the ground through the bottom of the proposed detention facility and flow downhill onto his property. The proposed detention facility will concentrate stormwater from this site and the proposed Walnut Village subdivision directly uphill from his property. He questioned how the detention facility will be maintained. He argued that the applicant should be required to terminate 75th Avenue as a dead-end street at 56th Street in order to avoid cut-through traffic. He testified that speeding traffic is a significant problem in the area under existing conditions. Intersections in the area should be posted as four-way stops in order to force traffic to slow down.

8. Daniel Tracewell argued that the applicant may need to construct a retaining wall along portions of the east boundary. He argued that the elevation of the site is higher than it appears in the applicant's topography maps. He argued that the County should post a stop sign at the intersection of 58th Street and 75th Avenue.

9. Laura Peterson argued that the lack of frontage improvements along the 18-foot strip between the site and the Robins Glen subdivision will create a hazard. The unimproved section will "jut out" into the street. The applicant should be required to eliminate the hazard by constructing frontage improvements between the site and Robins Glen. The proposed asphalt path will accommodate pedestrian traffic, but not vehicular traffic. She argued that the gap in the road improvements will create a significant hazard sufficient to warrant denial of the application under CCC 40.350.030(6)(a).

10. Rodger Chezik expressed concern with increased traffic in the area.

11. County development engineer Paul Knox responded to the concerns expressed by area residents.

a. He opined that the asphalt pedestrian path proposed by the applicant will provide a safe walking route for children who walk to school. The applicant will construct sidewalks on roads within and abutting the site. The asphalt path will provide a connection between the site and existing sidewalks to the east and north, which provide a safe walking route to the Walnut Grove Elementary School. The applicant should be required to construct the path as a condition of approval. The applicant is not required to construct a permanent sidewalk or other off-site road improvements unless the proposed development will create or materially aggravate an existing hazard. The lack of sidewalks is an existing problem, which the proposed development did not create.

b. He noted that the applicant proposed to construct NE 75th Street with a 28 foot pavement width, consistent with County standards for local access roads. On-street parking is permitted on both sides of local access roads. Driveways serving the proposed lots may limit opportunities for on-street parking. However the Code does not require that developments provide on-street parking.

c. He noted that the soils on the site are relatively impervious and do not allow stormwater to infiltrate into the ground. Stormwater is unlikely to infiltrate through the bottom of the stormwater detention pond for the same reason. The applicant proposed to discharge stormwater from the site into the existing storm sewer, which will carry the runoff away from the area.

i. The applicant is prohibited from increasing or concentrating stormwater runoff onto adjacent properties. The applicant is required to grade the site to direct runoff away from abutting properties. This is required by Condition A.9 of Exhibit 24.

ii. The applicant is required to install footing drains around the foundations of the homes on the site in order to direct runoff away from the homes.

d. He testified that NE 58th Street is a collector street that is intended to carry higher volumes of traffic. The proposed development will generate additional traffic on this and other streets in the area, but it will not exceed the capacity of those streets. He encouraged area residents to contact the County Public Works Department to request review of the need for traffic calming measures in the area. However he opined that Public Works will not require four-way stop controlled intersections on 58th Avenue, because it is a collector street that is intended to carry traffic through the area.

e. He opined that terminating 75th Avenue as a dead-end street would conflict with the County's street connectivity and cross-circulation standards. If the applicant could terminate 75th Avenue, the applicant would be required to extend 75th Avenue north from 56th Street to provide access to the site. The Code requires that streets connect to the lowest classification street. Traffic from the site would be forced to travel through the surrounding neighborhood to access 58th Street.

f. He testified that underground detention facilities may be located in the public street right of way. He requested the examiner modify condition A.12 to that effect as proposed by the applicant.

g. He requested the examiner hold the record open to allow County transportation engineering staff to comment on the need for off-site road improvements between the site and the Robins Glen subdivision.

12. At the end of the hearing the examiner held open the public record for one week to allow County staff an opportunity to submit additional testimony regarding the need for off-site road improvements on 56th and 58th Streets. The examiner held the

record open for a second week to allow the applicant to respond to staff's testimony and to submit a final written argument. The record closed at 5 PM on October 4, 2004.

a. While the record was held open the applicant agreed to dedicate right of way and construct offsite frontage improvements on the 56th and 58th Street frontages abutting the 18-foot parcel. See Exhibit 32. John and Laura Peterson obtained a quit-claim deed to the 18-foot strip and agreed to dedicate the necessary right of way for construction of the improvements. See Exhibit 33.

C. DISCUSSION

1. County staff recommended approval of the preliminary subdivision plat, based on the affirmative findings and subject to conditions of approval in the Staff Report as modified at the hearing. The applicant accepted those findings and conditions as modified without exceptions.

2. The examiner concludes the affirmative findings in the Staff Report as modified show the proposed preliminary plat does or can comply with the applicable standards of the County Code and Revised Code of Washington, provided the applicant complies with recommended conditions of approval. The examiner adopts the affirmative findings in the Staff Report as his own, except to the extent they are inconsistent with the findings in this order.

3. The examiner finds that the applicant's proposal to extend NE 75th Avenue through the site, creating a new connection between NE 56th and 58th Streets, is consistent with the cross-circulation requirements of CCC 40.350.030.B(2) and County's goal of providing an interconnected street system.

a. CCC 40.350.030.B(2)(c) provides:

(1) Cross-circulation. Cross-circulation shall be provided in a manner, where possible, that will allow subsequent developments to meet these standards.

(a) Block Length. Block lengths shall be between one hundred (100) to eight hundred (800) feet; provided, that where a block is partially defined by an arterial or industrial road the block lengths along the arterial shall be no less than the minimum full access intersection spacing specified in Table 40.350.030-2 through Table 40.350.030-6.

(b) Block Perimeter. The block perimeter shall not exceed three thousand two hundred (3,200) feet unless accessway(s) for pedestrian or bicycle circulation are provided or where topographic or other physical constraints preclude achieving this standard.

(2) Access Street System. The access street system shall:

- (a) Provide convenient parcel access to and from adjacent arterials and/or collectors;
- (b) Be designed to discourage external traffic from shortcutting;
- (c) Be designed to discourage vehicular speeds in excess of legal speed limits;
- (d) Be designed for convenient circulation of internal traffic without reliance on the arterial systems;
- (e) Support direct travel by pedestrians, bicyclists, and transit users, and;
- (f) Discourage unnecessary streets and hard surfaces.

b. The examiner finds that some of these criteria conflict. A street system that meets the block length and perimeter standards, provides convenient access to the arterial system and convenient internal circulation also provides opportunities for cut-through traffic by its nature. The examiner must balance these partially contradictory considerations in reviewing this development.

c. The examiner finds that the proposed street connection is consistent with CCC 40.350.030.B(2)(c), on balance.

i. The proposed street connection clearly provides convenient parcel access to and from the adjacent collector, NE 58th Street north of the site. CCC 40.350.030.B(2)(c)(2)(a). The street design also provides convenient circulation of internal traffic without reliance on the arterial systems and supports direct travel by pedestrians, bicyclists, and transit users. CCC 40.350.030.B(2)(c)(2)(d) and (e). The alternative cul-de-sac street system suggested by the neighbors is inconsistent with these criteria. Terminating NE 78th Avenue in a cul-de-sac within the site would restrict vehicular access through the site for residents of the site and surrounding neighborhoods. Residents of the site would be forced to travel relatively far out-of-direction in order to access the collector street system.²

ii. The examiner finds that the street system is designed to discourage external traffic from shortcutting, based on the traffic study and the expert testimony of the County engineering staff. CCC 40.350.030.B(2)(c)(2)(b). The proposed

² The applicant cannot extend 78th Avenue south from 58th Street as a cul-de-sac street. The Code generally requires access to the lower classification street where the site abuts more than one street, NE 56th Street in this case.

street connections will generate increased traffic on area streets, including some cut-through traffic. However the Code does not prohibit any cut-through traffic. It provides designs shall “discourage” cut-through traffic. The examiner finds that the existing and proposed street system will discourage cut-through traffic. Drivers will logically travel on the shortest, most direct route. The arterial and collector street system --- 72nd Avenue, 58th Street and 82nd Avenue --- provides the most direct route to the majority of destinations in the area, including the Vancouver Mall southeast of the site. The proposed 75th Avenue street connection does not provide direct access. Traffic must meander through the area on several different streets with many turns and one or more stop signs. The examiner is not convinced that this connection will encourage sufficient cut-through traffic that it will be excessive (e.g., it will not exceed the capacity of area streets or cause affected intersections to fall to a failing level of service or create a hazard). Existing 76th Avenue east of the site provides a similar opportunity for cut-through traffic under existing conditions. However there is no substantial evidence in the record that this street carries a significant volume of traffic in excess of that generated by the existing homes with access to the street.

(A) The proposed development and street connection will allow cut-through traffic in an amount that may be perceptible to area residents. However the County Engineer determined that it will not exceed the capacity of streets nor create a hazard. There is no substantial evidence to the contrary. Neighbors testified that the traffic from the development will exacerbate existing hazards. Neighbors’ observations of existing traffic is substantial evidence. But their opinions that traffic generated by the proposed development and street connection will make the streets unsafe is not supported by substantial evidence, because they are not experts in such matters. The fears of a substantial increase in traffic are reasonable; no one wants more traffic through their neighborhood. But fear is not evidence, even if reasonable. The examiner finds that the expert testimony by the traffic engineers for the applicant and the County is more persuasive than neighbors’ testimony about the impact of traffic resulting from the development and street connection.

(B) Higher traffic volume creates a roughly proportionally higher risk for drivers, pedestrians and bicyclists. In response reasonably prudent people exercise more care personally and with family members. The examiner concludes that the increased risk that results from traffic generated by the proposed development and the 76th Avenue extension does not pose a hazard to public health and safety, because of the small absolute and relative impacts of the subdivision. Those risks are consistent with the location of the site in the urban area where county plans call for the sort of development being proposed. Parents have an obligation to warn their children of the risks of traffic and to educate and supervise them accordingly.

iii. The examiner finds that the street system, including the street connections through this site, is designed to discourage vehicle speeds in excess of legal speed limits, to the extent feasible. CCC 40.350.030.B(2)(c)(2)(c). The relatively narrow width of the site and the need to meet minimum density requirements limit the applicant’s ability to design NE 78th Avenue as a curvilinear street. However the

extension of NE 78th Avenue through the site provides a relatively short street section, terminating in a T intersection at 56th Street, which prevents drivers from reaching higher speeds. The applicant also designed NE 78th Avenue with a narrow, 28-foot, pavement width with parking permitted on both sides, which limits the width of the travel lanes. See Table 40.350.030-4. The narrow road width will discourage cut-through traffic and force drivers to slow down as they travel through the site.

iv. Reasonably prudent drivers will observe the posted speed limits and traffic control signs in the area and will further reduce their speed to accommodate sharp curves, narrow pavement and other conditions on area roads. Unfortunately not all drivers are prudent enough to observe posted speed limits and road conditions. However there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers. If necessary the County can further address issues of speeding by installing speed bumps and other traffic calming measures. This method retains the benefits of an interconnected street system while limiting impacts where needed. It also allows the County to implement measures designed to address the specific problems that arise, if any, once the connections are completed. The hearings officer has no authority to require that the applicant install additional traffic calming measures in this case. The Code provides sole authority to the County engineer to determine whether traffic calming measures are warranted as a condition of development approval. CCC 40.350.030.B(13).

4. The applicant requested a modification to the intersection spacing requirements of CCC Table 40.350.030-2. The site is too narrow to allow construction of an intersection along the site's 58th Street frontage in compliance with spacing requirements. The applicant proposed to locate the intersection near the center of the site in order to facilitate the creation of lots for single-family detached homes on either side of proposed 75th Avenue. Neighbors argued that the applicant should be required to shift the intersection to the west side of site in order to maximize intersection spacing. However the examiner finds, based on the expert testimony of the County engineer, that the proposed intersection design will not create a hazard and "no significant benefit results" from shifting the intersection to the west. See p. 5 of Exhibit 24 Therefore the proposed road modification should be approved.

5. Several neighbors expressed concern that variations in street width created by the intervening 18-foot parcel between this site and the Robins Glen subdivision will create a hazard for traffic on 56th and 58th Streets. However the applicant subsequently volunteered to eliminate the alleged hazard by constructing off-site frontage improvements on the section of 56th and 58th Streets between the site and the Robins Glen subdivision. See Exhibit 32. The record owner of the intervening property agreed to dedicate the necessary right of way to accommodate these improvements. Exhibit 33. Therefore the examiner finds that it is feasible to construct frontage improvements and eliminate the hazard. A condition of approval is warranted to that effect.

6. The examiner finds that the proposed development makes adequate provisions for vehicular parking. The applicant is required to provide a minimum of two off-street

parking spaces per home. CCC Table 40.340.010-4.A(1). The proposed home designs provide at least two off-street parking spaces, within garages and on the driveway in front of the garage, consistent with this requirement. See Sheet 7 of Exhibit 5. The Code does not require on-street parking. However the applicant proposed to develop the lots with paired driveways in order to maximize opportunities for on-street parking on 75th Avenue. A condition of approval is warranted to that effect.

7. The applicant is required to provide a safe walking route for children who walk to school. RCW 58.17.110. In this case the school district testified that all children from this site will be bussed to Gaiser Middle School and Fort Vancouver High School. Children will walk to Walnut Grove Elementary School. The applicant can fulfill its responsibility under this part of RCW 58.17.110 by providing continuous sidewalks within the site and between the site and existing sidewalks to the east, which provide access to Walnut Grove Elementary School and the existing bus stop at 76th Avenue and 58th Street. The applicant agreed to extend offsite sidewalks between the site and the existing sidewalks abutting the Robins Glen subdivision. See Exhibit 32. Therefore the examiner finds that the proposed subdivision makes adequate provisions for children who walk to school. A condition of approval is warranted to that effect.

8. The applicant is not otherwise required to construct offsite sidewalks in the area, because it would be disproportionate to the impact of the subdivision on the need for such facilities. Applicants are not required to remedy all perceived and existing deficiencies in the vicinity of a development. The County Code requires an applicant to mitigate impacts a development causes or to which it contributes significantly. Although the proposed development contributes to problems with substandard streets in the area, those problems exist largely because of existing development. It would be inequitable to require an applicant to bear the full burden of improvements where the proposed development is only responsible for a small portion of the problem. The need for sidewalks is one that exists generally along streets in the area, and is a need to which all adjoining properties contribute, not just the lots being created in this case. Sidewalks in the area will interconnect over time as other properties in the area develop, but the applicant is not required to make such connections at this time.

9. The examiner finds that the proposed development will not cause or exacerbate flooding and drainage problems on abutting properties.

a. It is apparent from the topographic maps in the record that surface run-off from the site flows downhill onto the adjoining property to the north, south and east under existing conditions. Development on the proposed lots will increase the amount of impervious surface area on the site. Therefore it will reduce the area where water can infiltrate. Absent any other improvements, that would increase the volume of stormwater run-off discharged off-site.

b. Grading and filling on the site will alter the existing topography and could potentially increase run-off onto adjacent properties. However the Code expressly prohibits such impacts. CCC 40.380.060.C(1)(g) provides that “no development within

the urban growth area shall be allowed to materially increase or concentrate storm water runoff onto adjacent property or block existing drainage from adjacent lots.” The examiner finds, based on the applicant’s preliminary stormwater report, that it is feasible to comply with CCC 40.380.060.C(1)(g). In fact the applicant proposes to collect storm water that now flows offsite and to divert it to the stormwater facility at the south end of the site for treatment and discharge to the existing storm sewer system that will carry it away from the area. Therefore the proposed development is likely to reduce the amount of surface and groundwater in the area, potentially reducing crawlspace flooding and other problems noted by surrounding residents.

c. The applicant proposed to collect runoff from the entire site and from the future Walnut Village development to the north and convey it to a stormwater facility in the southeast corner of the site for treatment and detention. Mr. Butir expressed concern that stormwater may infiltrate through the bottom of the detention pond, exacerbating existing high groundwater and flooding problems on his property south of the site. Mr. Carpenter argued that the little infiltration will occur through the bottom of the detention pond, given the relatively impervious soils on the site.

i. The examiner finds that, although the soils in the area are relatively impervious, some volume of stormwater may infiltrate through the bottom of the stormwater pond. By concentrating a large volume of stormwater in a relatively small area the applicant increases the potential that such infiltration will occur and impact adjacent properties.

ii. The examiner finds that the applicant can avoid such impacts by detaining stormwater in an underground pipe or tank or by installing a liner to prevent stormwater from infiltrating through the bottom of the detention pond. In the alternative, the applicant could provide evidence from a professional engineer demonstrating that the rate of infiltration through the bottom of the detention pond will not increase or concentrate the rate or volume of surface and ground water runoff flowing onto any adjacent properties under existing conditions. The applicant should be required to implement one or more of these methods in the final engineering design. A condition of approval is warranted to that effect.

d. Mr. Stewart testified that the applicant may provide underground detention for all or a portion of the stormwater. Stormwater facilities may be located in the public right of way, subject to County approval. See CCC 40.380.040.H(1). Condition of approval A.9 of Exhibit 24 should be modified to that effect.

10. The hearings officer finds that stormwater runoff from the proposed development will not cause or exacerbate water quality problems in the area. The applicant is required to design and construct the stormwater facilities on this site to the current County standards that require the use of the current “Best Management Practices” (“BMPs”) for stormwater treatment. See CCC 40.380.040. The applicant will collect stormwater runoff from all impervious areas of the site, including roof downspouts and runoff that enters the site from abutting properties. The applicant will treat the

stormwater to remove pollutants and sediment using current BMPs. The applicant will detain the treated stormwater on the site before releasing it to the existing storm sewer at less than predevelopment rates consistent with the capacity of the existing storm sewer system.

11. The applicant proposed to dedicate the stormwater facilities to the County. The applicant is required to maintain the facilities for the first two years after the County accepts ownership. The County is responsible for long term maintenance. See CCC 40.380.040.H(3).

12. The hearings officer finds that it is feasible to grade the site to accommodate the proposed development. The applicant may need to construct retaining walls along portions of the site in order to accommodate the rolling topography of the site. However the Code does not prohibit such measures.

13. Concerns were expressed about the density of development proposed. However this area has been zoned R-22 for several years. The density proposed for this site is within the range permitted by the comprehensive plan map designation and zoning of the site. Therefore the examiner finds that the proposed lot sizes and density are consistent with applicable standards, and objections to the lot sizes and density are not supported by the law or by the facts.

a. The Code does not authorize the County to require larger lots so that they are consistent with the size of surrounding lots. In fact such a requirement is prohibited by the Growth Management Act (RCW 36.70B.030) as amended by the 1995 Legislature, which prohibits review of the allowed density as part of the review of the preliminary plat.

b. Even if he wanted to, the applicant could not develop substantially larger lots under the current zoning. The Code imposes minimum density and maximum lot sizes to maximize the density in the urban growth boundary, consistent with the comprehensive plan and zoning maps, to make the most efficient use of urban services.

14. Neighbors alleged that the proposed development will be incompatible with surrounding existing development, contrary to CCC 40.520.020.C(3), principally because the proposed lots are smaller than lots in the adjacent Robins Glen subdivision. The examiner disagrees.

a. Development in the R-22 zone must be compatible with adjacent uses, "including such considerations as privacy, noise, lighting and design." CCC 40.220.020.A(1)(b). See also, CCC 40.520.020.C(3).

i. The examiner finds that the development proposed in this case is compatible, because the applicant proposed to develop the site with single-family detached homes adjacent to existing single-family development. Although the proposed lots are smaller than adjacent lots, the uses are not incompatible.

ii. The examiner agrees that the view east from the second story of dwellings along the east side of the site will reduce the privacy of existing homes to the east, particularly in back yards. If the second floor of units along the east edge of the site are stepped back, it would preserve more of the privacy of and would be more compatible with adjoining dwellings to the east. But the applicant does not propose to do so, based on the building elevations on exhibit 5. The examiner does not have authority to restrict development on this site to single story residences or to require the buildings to be oriented or designed in a certain way. The Code does not include such restrictions, other than a 45-foot height limit and the setback and buffer requirements.

iii. The site is separated from existing homes to the north and south by intervening roads and from homes to the east by the intervening 18-foot wide parcel. This physical separation provides a buffer between the site and surrounding properties. In addition, the applicant proposed to install a six-foot high fence, trees and landscaping along the east and west boundaries of the site, which will provide an additional buffer between the site and abutting properties. See Sheet 8 of Exhibit 5.

(A) Neighboring residents requested that the applicant coordinate with them regarding development and landscaping on the site in order to maximize the effectiveness of landscaping and screening on this site and adjacent properties. The examiner encourages the applicant to do so, but nothing in the Code requires such coordination.

iv. The applicant's landscape plan, Sheet 8 of Exhibit 5, does not appear to provide a landscape buffer along the south boundary of the site. The examiner finds that CCC Table 40.320.010-1 requires an L-2 buffer along the south boundary of the site, where the site is separated by a street from adjacent R1-6 zoned property. Condition of approval C-1 should be modified to that effect.

15. The applicant will extend sewer lines into the site with stubs to the boundaries of the site to serve existing and future development on adjacent properties. However the applicant is not required to provides sewer connections for existing homes in the area.

16. The applicant did not propose any private roads. Therefore condition of approval D.10 should be deleted.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that PLD 2004-00056 (Walnut Grove), and related applications should be approved, because they do or can comply with the applicable standards of the Clark County Code and the Revised Code of the State of Washington, subject to conditions of approval necessary to ensure the final plat and resulting development will comply with the Code.

E. DECISION

Based on the foregoing findings and except as conditioned below, the examiner hereby approves PLD 2004-00056 (Walnut Grove) and related applications in general conformance with the applicant's proposal (Exhibit 5) and the plans and reports associated with this proposal (Exhibits 6, 7 21, 24, 25, 28, and 32). This approval is granted subject to the requirements that the applicant, owner or subsequent developer (the "applicant") shall comply with all applicable code provisions, laws and standards and the following conditions. These conditions shall be interpreted and implemented consistently with the foregoing findings.

A. Conditions that must be met prior to Final Plat approval and recording; or if improvements are approved by the county for bonding or other secure method, such conditions shall be met prior to issuance of Building Permits per CCC, Sections 40.350.030(C)(4)(i) & (j) and 40.380.040N.

Land Use

- A-1** Each lot proposed in this subdivision shall comply with the development requirements per Table 40.220.020-1 and Table 40.220.020-2 regarding minimum lot width, lot depth, lot area, lot coverage and building height standards.

Concurrency

- A-2** The applicant shall reimburse the County for the cost of concurrency modeling incurred in determining the impact of the proposed development, in an amount not to exceed \$1,000. The reimbursement shall be made within 60 days of issuance of the Staff Report with evidence of payment presented to staff at Clark County Public Works.
- A-3** The applicant shall reimburse the City for the cost of concurrency modeling incurred in determining the impact of the proposed development, in an amount not to exceed \$420.00. The reimbursement shall be made within 60 days of issuance of the Staff Report with evidence of payment presented to staff at Clark County Public Works.

Transportation

- A-4** The applicant shall improve NE 75th Avenue to the standards of a local access road in accordance with CCC Table 40.350.030-4 and the Standard Details Manual, Standard Drawing #14.
- A-5** The applicant shall install partial-width improvements to NE 58th Street to the standards of an urban neighborhood circulator road in accordance with CCC Table 40.350.030-2 and the Standard Details Manual, Standard Drawing #12 along the site frontage and off site, between the east boundary of the site and the existing improvements within the Robins Glen subdivision.
- A-6** The applicant shall install partial-width improvements to NE 56th Street to the standards of an urban neighborhood circulator road in accordance with CCC Table 40.350.030-4 and the Standard Details Manual, Standard Drawing #13 along the site frontage and off site, between the east boundary of the site and the existing improvements within the Robins Glen subdivision.
- A-7** In accordance with the requirements of CCC 40.350.030(B)(7), the intersection of NE 75th Avenue with the collector road NE 58th Street shall have a minimum corner radius of 25 feet along the right-of-way lines and shall require the chord of the radius. The county will accept an easement for this chord instead of right-of-way. The minimum curb radius at this intersection shall be 35 feet as required by CCC Table 40.350.030-2.
- A-8** Proposed intersections and driveways shall be constructed accordance with the sight distance requirements of CCC 40.350.030(B)(8).

- A-9** The applicant shall be responsible for the installation of the sidewalks along NE 58th Street, and the street frontages of the stormwater tract and the off-site portions of 56th and 58th Streets, between the site and the existing sidewalks within the Robins Glen subdivision.
- A-10** The applicant shall install a 6-foot wide sidewalk along the south side of NE 58th Street immediately adjacent to the curb except as required to form a smooth and safe transition in the sidewalk near the site's west end to match the detached sidewalk approved for the Walnut Grove Apartments (PSR2003-00042) immediately west of the site.

Stormwater

- A-11** In accordance with the requirements of CCC 40.380.040(C)(4), the final construction plans and stormwater report shall quantify the flows entering site from offsite areas, and demonstrate that they are adequately collected and conveyed through the site and detention facility.
- A-12** The final construction plans and stormwater report shall clearly describe the measures that are proposed to prevent runoff onto adjacent properties and maintain existing drainage from adjacent lots In accordance with CCC 40.380.040(C)(1)(g).
- A-13** In accordance with CCC 40.380.040(C)(1)(h), all lots in the urban area must be designed to provide positive drainage from the bottom of footings to an approved stormwater system.
- A-14** The applicant shall provide water quality treatment facilities which comply with the requirements of CCC 40.380.040(B) and the specific design standards contained in CCC 40.380.040(G).
- A-15** Proposed underground detention facilities, if used, shall be placed within separate tracts identified on the final plant as required by CCC 40.380.040(D)(7), or as otherwise approved. Provisions for access to the underground detention facilities by maintenance equipment which are acceptable to the county shall be provided.
- A-16** For any proposal to place detention facilities upstream of water quality treatment, the applicant shall be required to provide evidence acceptable to Engineering Services that the proposed facility will provide effective long-term water quality treatment that will not burden the public with maintenance or operational requirements which exceed those required of existing, standard county-approved BMP's.
- A-17** In accordance with CCC 40.380.040(C)(3), detention facilities shall be sized to detain the post-development stormwater runoff from the development and only release runoff at a peak release rate equal to one-half of the pre-developed 2-year storm peak runoff rate; and not exceeding 10-year and 100-year pre-developed

runoff rates. The applicant shall carefully evaluate the accommodation of offsite drainage that contributes to the project site, as it could adversely impact the size, configuration, or appurtenances associated with the detention facility. If stormwater facilities larger than those illustrated on the preliminary plans are required, the site appears to have sufficient area to accommodate the larger facilities. Allocation of more land for the stormwater facilities could potentially result in the loss of lots.

- A-18** The applicant shall detain stormwater in a pipe, tank, lined pond or other facility which precludes stormwater from infiltrating into the soil or provide evidence from a professional engineer demonstrating that stormwater infiltrating through the detention facility will not increase or concentrate the rate or volume of surface and ground water runoff flowing onto any adjacent properties under existing conditions,.

Fire Protection

- A-19** Fire flow in the amount of 1,000 gallons per minute supplied for 60 minutes duration is required for this application. A utility review from the water purveyor indicates that the required fire flow is not currently available at the site. Additions to water mains supplying fire flow and fire hydrants shall be installed, approved and operational prior to final plat approval.

- A-20** Fire hydrants are required for this application. The applicant shall provide fire hydrants such that the maximum spacing between hydrants does not exceed 700 feet and such that no lot or parcel is in excess of 500 feet from a fire hydrant as measured along approved fire apparatus access roads.

- A-21** Unless waived by the fire district chief fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection. The local fire district chief approves the exact locations of fire hydrants. As a condition of approval, contact the Vancouver Fire Department at 360-696-8166 to arrange for location approval. The applicant shall provide and maintain a six-foot clear space completely around every fire hydrant (see conditions of approval B-1, A-4 and A-5).

Health Department

- A-22** Advisory: If underground storage tanks exist on the property, they must be identified and decommissioned in place consistent with the Uniform Fire Code under permit from the Fire Marshal. Any leaks or contamination must be reported to Washington State Department of Ecology, and proof of removal or abandonment (of the tank) must be submitted to the Health Department prior to final plat recording.

B. Conditions that must be met prior to issuance of Building Permits

Concurrency

- B-1** Prior to issuance of any building or grading permits for the development site, the applicant shall obtain written approval from Clark County Department of Public Works of the applicant's Traffic Control Plan (TCP). The TCP shall govern all work within or impacting the public transportation system.

Fire Protection

- B-2** Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process, (see condition of approval B-2).

Impact Fees

- B-3** "In accordance with CCC 40.610, except for Lot 1 that is exempt from impact fees exaction, the park, school, and traffic impact fees for each of the 29 new single-family attached dwellings in this subdivision are:

- Park Impact Fees: \$1,885.00, (made up of \$1,445.00 acquisition fee, and \$440.00 Development fees for Park District 7);
- School Impact Fees: \$1,725.00 (for Vancouver School District); and,
- Traffic Impact Fees: \$1,342.19 (for Orchards TIF district).

If a building permit application is made more than three years following the date of preliminary plat approval, the impact fees shall be recalculated according to the then-current ordinance rate.

- B-4** Lots on the site shall be developed with paired driveways in order to maximize opportunities for on-street parking on 75th Avenue.

<p><u>C. Conditions that must be met prior to issuance of Occupancy Permits</u></p>
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Landscaping

- C-1** The applicant shall implement the landscaping plan identified as Sheet 8 of 8 on Exhibit 5. In addition, the applicant shall install an L-2 landscape buffer along the south boundary of the site as required by CCC 40.Table 40.320.010-1.

Fire Protection

- C-2** Fire apparatus access is required for this application. The roadways and maneuvering areas as indicated in the application shall meet the requirements of the Clark County Road Standard. The applicant shall provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface capable of supporting the imposed loads of fire apparatus.

Sidewalks

- C-3** Sidewalks along the frontage of each residential lot shall be constructed prior to the issuance of occupancy permit for that residence.

D. Notes Required on Final Plat

The following notes shall be placed on the final plat:

D-1 Archaeological:

"If any cultural resources are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."

D-2 Mobile Homes:

"Placement of Mobile Homes is prohibited."

D-3 Impact Fees:

"In accordance with CCC 40.610, except for Lot 1 designated on the final plat as waived, the Park, School and Traffic Impact Fees for each of the 29 townhouses in this subdivision are: \$1,885.00 (\$1,445.00 - Acquisition; \$440.00 - Development for Park District 7), \$1,725.00 (for Vancouver School District), and \$1,342.19 (for Orchards TIF district), respectively. The impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated [REDACTED], and expiring on [REDACTED]. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedule."

D-4 Sidewalks:

"Prior to issuance of occupancy permits, sidewalks shall be constructed along all lots as noted. Sidewalks considered to be the responsibility of the developer, shall be constructed prior to final plat approval."

D-5 Utilities:

"An easement is hereby reserved under and upon the exterior six (6) feet at the front boundary lines of all lots for the installation, construction, renewing, operating and maintaining electric, telephone, TV, cable, water and sanitary sewer services. Also, a sidewalk easement, as necessary to comply with ADA slope requirements, shall be reserved upon the exterior six (6) feet along the front boundary lines of all lots adjacent to public streets."

D-6 Critical Aquifer Recharge Areas:

"The dumping of chemicals into the groundwater and the use of excessive fertilizers and pesticides shall be avoided. Homeowners are encouraged to contact the State Wellhead Protection program at (206) 586-9041 or the Washington State Department of Ecology at 800-RECYCLE for more information on groundwater /drinking supply protection."

D-7 Erosion Control:

"Building Permits for lots on the plat shall comply with the approved erosion control plan on file with Clark County Building Department and put in place prior to construction."

D-8 Driveways:

"No direct access is allowed onto the following streets: NE 58th Street and NE 56th Street."

D-9 Driveways:

"All residential driveway approaches entering public roads are required to comply with CCC 40.350."

E. Standard Conditions

This development proposal shall conform to all applicable sections of the Clark County Code. The following conditions shall also apply:

Land Division:

E-1 Within 5 years of preliminary plan approval, a Fully Complete application for Final Plat review shall be submitted.

Water Wells and Septic Systems:

E-2 Submittal of a "Health Department Evaluation Letter" is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable "Health Department Well/Septic Abandonment Letter" must be submitted, the Evaluation Letter will specify the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to occupancy).

Final Construction Plan Review:

E-3 Transportation:

Prior to construction, the applicant shall submit and obtain County approval of a final transportation design in conformance to CCC 40.350.

E-4 Stormwater:

Prior to construction, the applicant shall submit and obtain County approval of a final stormwater plan designed in conformance to CCC 40.380.

E-5 Pre-Construction Conference:

Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.

E-6 Erosion Control:

Prior to construction, the applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 40.380.

E-7 Erosion Control:

A copy of the approved erosion control plan shall be submitted to the Chief Building Official prior to final plat recording.

E-8 Erosion Control:

Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.

E-9 Erosion Control:

Erosion control facilities shall **not** be removed without County approval.

E-10 Excavation and Grading:

Excavation/grading shall be performed in compliance with Appendix Chapter 33 of the Uniform Building Code (UBC).

E-11 Excavation and Grading:

Site excavation/grading shall be accomplished, and drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC 14.04.252.

E-12 Landscaping:

Prior to recording the final plat, the applicant shall submit a copy of the approved landscape plan(s) for any public right-of-way (if applicable) with a letter signed and stamped by a landscape architect licensed in the state of Washington certifying that the landscape and irrigation (if any) have been installed in accordance with the attached approved plan(s) and verifying that any plant substitutions are comparable to the approved plantings and suitable for the site.

DATED this _____ day of October 2004

Joe Turner, AICP
Clark County Land Use Hearing Examiner